



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 04, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$89 for the period of November 1, 2012 – July 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jose Sylvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 1, 2012, the Petitioner applied for FS benefits. She accurately reported a household size of three. She accurately reported the household's income.

- [REDACTED]
3. Petitioner's son received FS benefits from the State of Washington through October 31, 2012. The agency verified that FS benefits ended in Washington effective November 1, 2012. The agency incorrectly coded the Petitioner's son as not being in the Petitioner's FS group. His unearned income was not counted in determining Petitioner's FS benefits and the agency incorrectly determined Petitioner's FS benefits based on a household of two. The agency errors were not discovered until April 9, 2013.
 4. In May, 2013, the agency properly budgeted the Petitioner's son's federal SSI income and properly based benefits on a household size of three. However, the agency failed to include the Petitioner's son's state SSI supplement in determining benefits. This error was discovered in June, 2013 and corrected in July, 2013.
 5. The Petitioner's son has monthly unearned SSI of \$162 effective January 1, 2013. His unearned SSI for November and December, 2012 was \$159/month. He also receives Social Security Surviving child benefits. The Petitioner receives SSI of \$1103/month effective January 1, 2013. For November and December, 2012, Petitioner received SSI of \$1047/month.
 6. On October 9, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intends to recoup an overissuance of FS benefits in the amount of \$89 for the period of November 1, 2012 – July 31, 2013.
 7. On November 26, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals. A hearing was scheduled for January 7, 2014. A decision dismissing the appeal was issued on January 8, 2014 for non-appearance by the Petitioner. On February 4, 2014, Petitioner's request for a rehearing was granted.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1.

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in July, 2013. The agency concedes that the overissuance is a result of agency error and there was no client error. Because it is an agency error, the agency may seek to recover for 12 months prior to the discovery of the error and potential overissuance in April, 2013.

The agency concedes that it inaccurately coded the Petitioner's son as being out of the household and, as a result, failed to include the son's unearned income in determining benefits and failed to accurately determine benefits based on a household of three. The Petitioner appealed the overissuance because she wanted to be sure that it was not determined to be an error on her part that caused the overissuance. She did not dispute the agency's re-calculation of benefits on the overissuance worksheet. The client was assured that this was a result of agency error.

I reviewed the agency worksheets. With regard to January – April, 2013, I conclude the agency properly calculated Petitioner's household income as \$1,815.90 in January, 2013 and \$1,816/month for February – April, 2013. Based on that income and a household size of three, the agency properly calculated an overissuance of \$54 for January and \$55/month for February – April, 2013.

With regard to November and December, 2012, the evidence appears to indicate that the agency may have under-budgeted the Petitioner's household income. The income of \$1361 on the overissuance worksheet appears to include \$1,047 of Petitioner's SSI, \$159 of Petitioner's son's state supplement SSI and \$155 for SSI. It is not clear to me from the evidence that \$155 is correct for the SSI. The evidence suggests that Petitioner's son received \$542/month in November and December, 2012 for SSI and \$551/month beginning January 1, 2013. Because it is not clear how the agency determined the corrected budget for November and December, 2012, I am remanding the matter to the agency to review those months. With regard to January – April, 2013, I conclude the agency properly calculated the overissuance.

I note that the agency has started recouping the overissuance from the Petitioner's monthly FS benefits. At the time of the hearing, the agency had recouped \$11 from the Petitioner's benefits.

CONCLUSIONS OF LAW

1. The agency properly seeks to recover an overissuance of FS benefits to the Petitioner due to agency error in failing to include the Petitioner's son in the Petitioner's household and failing to budget his income in determining FS benefits.
2. The agency properly seeks to recover an overissuance of FS benefits to the Petitioner in the amount of \$54 for January, 2013 and \$55/month for February – April, 2013.
3. The agency must review the Petitioner's household income for November and December, 2012 to determine the proper FS allotment and whether there was an overissuance or underissuance of benefits for those months.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to re-determine the proper FS allotment for Petitioner's household for November and December, 2012. Upon completion of the review, the agency shall issue another Notification of FS Overissuance to the Petitioner indicating the underissuance/overissuance for each month from November, 2012 – April, 2013. These actions shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

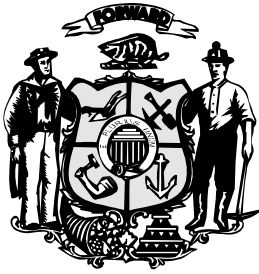
[REDACTED]

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of March, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 5, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability